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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CAROLYN MITCHELL,)
Plaintiff,)
vs.)
ANCHORAGE POLICE DEPARTMENT and the)
MUNICIPALITY OF ANCHORAGE, a)
municipal corporation, WALTER MONEGAN,)
Officer HENIKMAN, and Officer J. VOSS,)
Defendants.)
_____)
Case No. 3:05-cv-00273-JWS

PLAINTIFF'S MOTION FOR RULING ON
PREVAILING PARTY STATUS

Plaintiff, Carolyn Mitchell, through counsel, Isaac Derek Zorea, moves for recognition as the prevailing party in the above captioned lawsuit. On August 14, 2008, Defendants moved for costs permitted under Federal Rules of Civil Procedure, Rule 54(d), arguing that it was the prevailing party in this case. Associated with its motion for costs, Defendants set up a cost bill hearing with the court clerk.

1 On August 15, 2008, Plaintiff called the court clerk to set up a cost bill
2 hearing and submit its cost bill. During this conversation, the court clerk, Ida
3 Romack, stated that a determination of prevailing party status needed to be
4 established before plaintiff could submit its cost bill, or schedule a cost bill hearing.
5 This motion is being filed in order to establish which is the prevailing party to this
6 lawsuit. Thereby establishing which party is permitted costs associated with Federal
7 Rules of Civil Procedure, Rule 54.
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11 ARGUMENT

12 In its cost bill, submitted August 14, 2008, Defendants declared that
13 judgment had been entered against Carolyn Mitchell. In support of its allegation,
14 Defendants argue that Plaintiff failed to exceed the Offers of Judgment served to
15 plaintiff May 29, 2008. In response to Defendants' argument, Plaintiff argues that
16 judgment has not been entered against Carolyn Mitchell, see Dkt. 144. Further,
17 Plaintiff argues that the judgment, and costs, she is entitled to is in excess of the
18 offers submitted by defendants.
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20 When the pre-offer costs are added to the judgment Mitchell received at trial,
21 the judgment amount she is entitled to exceeds the offers of judgment submitted by
22 defendants on May 29, 2008. As such, Plaintiff is in fact the prevailing party to the
23 above captioned lawsuit.
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25 On May 29, 2008, Defendants Henikman, Voss, Monegan, and Municipality
26 of Anchorage, submitted Offers of Judgment in the amount of \$100 each, for a total
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1 of \$400 joint and several liability. The Offers of Judgment specified that the offers
2 were “inclusive of all allowable costs, interest and attorney fees.” According to
3 Federal Rules of Civil Procedure, Rule 68, if Mitchell failed to obtain final judgment,
4 including costs and attorney fees, in excess of the amount of the offer, she would be
5 liable for all post-offer costs incurred by Defendants. However, Rule 68 does not
6 state that if Mitchell did not exceed the offer, Defendants would become the
7 prevailing party. All Rule 68 stipulates is that if the offer is not exceeded, post-offer
8 costs would be paid by plaintiff.
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11 At the conclusion of trial, Mitchell obtained only nominal damages.
12 Obtaining even nominal damages, however, still designates Mitchell as the prevailing
13 party to the lawsuit. As the prevailing party, Mitchell would automatically be
14 entitled to costs under Rule 54. The pre-offer costs that Mitchell would be entitled to
15 must be calculated into the total judgment that she obtained pursuant to bring forth
16 her cause of action. Marek v. Chesny, 473 U.S. 1, 8 (1985); Champion Produce, Inc.
17 v. Ruby Robinson Co., Inc., 342 F.3d 1016, 1024, FN. 1, (9th Cir. 2003). As such, all
18 pre-offer costs associated with Mitchell’s case must be included as part of the
19 judgment. It is this final amount that must be compared with Defendants’ Offer of
20 Judgment to determine if Mitchell’s judgment exceeded the offer.
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23 As is evidenced by the attached proposed Bill of Costs, Exhibit A, Mitchell’s
24 costs, in addition to her judgment, in fact exceed the offers submitted to her on May
25 29, 2008. Consequently, Mitchell requests that this court declare that she is the
26 prevailing party, and entitled to submit her Bill of Costs, pursuant to Rule 54.
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1 Additionally, Mitchell requests that the Court reject Defendants' Bill of Costs, and
2 its assertion that it is the prevailing party in this lawsuit.

3 Respectfully submitted this 18th day of August 2008.

4
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12 Certificate of Service

13 I hereby certify that on August 18, 2008
14 I electronically filed the foregoing with
15 the Clerk of Court using the CM/ECF
16 system which sent notification to the
17 following:

18 James Reeves; and Elizabeth Friedman

19 and I hereby certify that I have mailed by
20 United States Postal Service the document
21 to the following non CM/ECF participants:

22 none.

23 Dated this 18th day of August 2008, at Anchorage, Alaska.

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